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SERIAL NUMBER 07/326,836	FILING DATE 03/21/89	CHANGE BY NAME OF NAMED INVENTOR	Y	ATTORNEY OR AGENT NO.
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158

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02/22/90

This application has been examined Responsive to communication filed on _____ This action is made final.

A shortened statutory period for response to this action is set to expire 3 month(s), 1 days from the date of this letter.
Failure to respond within the period for response will cause the application to become abandoned. 35 U.S.C. 133

Part I THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:

1. Notice of References Cited by Examiner, PTO-892.
2. Notice re Patent Drawing, PTO-948.
3. Notice of Art Cited by Applicant, PTO-1449.
4. Notice of Informal Patent Application, Form PTO-152.
5. Information on How to Effect Drawing Changes, PTO-1474.
6. _____

Part II SUMMARY OF ACTION

1. Claims 1-6 are pending in the application.
Of the above, claims _____ are withdrawn from consideration.
2. Claims _____ have been cancelled.
3. Claims _____ are allowed.
4. Claims 1-6 are rejected.
5. Claims _____ are objected to.
6. Claims _____ are subject to restriction or election requirement.
7. This application has been filed with informal drawings under 37 C.F.R. 1.85 which are acceptable for examination purposes.
8. Formal drawings are required in response to this Office action.
9. The corrected or substitute drawings have been received on _____. Under 37 C.F.R. 1.84 these drawings are acceptable. not acceptable (see explanation or Notice re Patent Drawing, PTO-948).
10. The proposed additional or substitute sheet(s) of drawings, filed on _____ has (have) been approved by the examiner. disapproved by the examiner (see explanation).
11. The proposed drawing correction, filed on _____, has been approved. disapproved (see explanation).
12. Acknowledgment is made of the claim for priority under U.S.C. 119. The certified copy has been received not been received been filed in parent application, serial no. _____ ; filed on _____.
13. Since this application appears to be in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11; 453 O.G. 213.
14. Other

EXAMINER'S ACTION

Art Unit 158

Claims 1-3 are rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 1-3 of prior United States Patent No. 4849224. This is a double patenting rejection.

Claims 4-6 are rejected under the judicially created doctrine of obviousness type double patenting as being unpatentable over claims 1-6 of United States Patent No. 4849224. Although the conflicting claims are not identical, they are not patentably distinct from each other because claim 1 differs only in a stated radius (h) which does not distinguish over claim 1 of 4892224. Similarly, the active agents are recited in claims 4-6 of the patent and the adhesion and penetrating agents are clearly within the scope of claim 1 of the patent and clearly spelled out in col. 5, lines 21 et seq., and the examples.

The obviousness type double patenting rejection is a judicially established doctrine based upon public policy and is primarily intended to prevent prolongation of the patent term by prohibiting claims in a second patent not patentably distinct from claims in a first patent. In re Vogel, 164 USPQ 619 (CCPA 1970). A timely filed terminal disclaimer in compliance with 37 CFR 1.321(b) would overcome an actual or provisional rejection on this ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.78(d).

Any inquiry concerning this communication should be directed to L.R. Horne at telephone number 703-557-6525.

Jew
L.R. Horne:jew
02/13/90

THURMAN K. PAGE
PROVINCIAL EXAMINER
ART UNIT 158
T.K. Page